

REMARKS

Claim 1 is amended to further clarify the subject matter and various of its dependent claims are amended in conformity. Claim 31 is amended for clarification in the manner suggested by the Examiner in the personal interview of October 15, 2008.

INTERVIEW SUMMARY

Applicants thank Examiner Pellegrino for the personal interview on October 15, 2008. Applicants submit this Statement of Substance of Interview to summarize the interview in compliance with MPEP § 713.04.

Type of Interview: In-person

Names of Participants: B. Pellegrino (Examiner) and S. Yu (Attorney)

Exhibits: N/A

Claims Discussed: Claims 1 and 31.

References Discussed: The references cited in the pending Office Action.

Principal Arguments of Applicants: The arguments already made of record were presented.

Agreement: Applicants agreed to amend claim 31 to clarify the existence of a longitudinal axis in the medical implant.

REJECTIONS UNDER § 102

Independent claim 1 and various claims that depend therefrom stand rejected under § 102(e) as being anticipated by US 2004/0039438 ("*Alt I*"). Applicants respectfully request reconsideration.

The Office Action refers to FIG. 2 in *Alt I* as showing an implant body 30 having a surface covered with an intermediate layer 32, which is preferably composed of a noble metal, such as platinum. The Office Action asserts that the metal material in intermediate layer 32 is capable of acting as a catalyst.

Applicants do not concede that the metal material in intermediate layer 32 of *Alt I* is necessarily capable of acting as a catalyst. However, Applicants note that even if the metal material in intermediate layer 32 of *Alt I* is capable of acting as a catalyst, there is no filter layer that covers the catalyst, as required by claim 1. Moreover, *Alt I* does not have any disclosure of a filter layer having “pores of sufficiently small size to retard the passage of red blood cells and white blood cells,” as also required by claim 1.

For at least these reasons, Applicants respectfully submit that claim 1, and the claims that depend therefrom, are not anticipated by *Alt I*. Accordingly, withdrawal of the rejection is respectfully requested.

REJECTIONS UNDER § 103

[A]. *Alt I*

Claims 4, 5, and 25 stand rejected under § 103(a) as being unpatentable over *Alt I*. Applicants respectfully request reconsideration.

The rejected claims depend from claim 1. On the basis of *Alt I* purportedly disclosing the invention of claim 1, the Office Action contends that the subject matter of dependent claims 4, 5, and 25 would be an obvious modification of the *Alt I* device. However, as explained above, *Alt I* does not disclose the invention of claim 1. *Alt I* fails to disclose a filter layer that covers the catalyst, as required by claim 1. Thus, even if *Alt I* could be modified in the manner suggested by the Office Action, this modification would still not meet the inventions of claims 4, 5, and 25, which all depend from claim 1.

For at least these reasons, Applicants submit that claims 4, 5, and 25 are non-obvious over *Alt I*. Accordingly, withdrawal of the rejections is respectfully requested.

[B]. *Alt I* in view of *Alt II*

Claim 10 stands rejected under § 103(a) as being unpatentable over *Alt I* in view of U.S. Patent No. 6,217,607 (“*Alt II*”). Applicants respectfully request reconsideration.

Claim 10 depends from claim 1. Like *Alt I*, and as explained in Applicants’ previous submissions, *Alt II* also fails to disclose a filter layer that covers the catalyst, as required by claim 1. Thus, even if *Alt I* could properly be combined with *Alt II* in the manner suggested by the Office Action, this combination would still fail to meet the invention of claim 1.

For at least these reasons, Applicants submit that claim 10 is non-obvious over *Alt I* in view of *Alt II*. Accordingly, withdrawal of the rejection is respectfully requested.

[C]. *Alt I* in view of *Smalley* / *Kula* in view of *Alt I*

Claims 21, 22, 28, and 29 stand rejected under § 103(a) as being unpatentable over *Alt I* in view of US 2002/0085968 (“*Smalley*”) Claims 31-33 and 35 (previously canceled) were rejected under § 103(a) as being unpatentable over U.S. Patent No. 6,325,825 (“*Kula*”) in view of *Alt I*. Applicants respectfully request reconsideration.

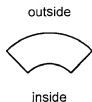
Both of the above rejections rely on *Alt I* for its purported disclosure of a filter layer. However, as explained above, *Alt I* does not disclose a filter layer that covers the catalyst; or a filter layer having “pores of sufficiently small size to retard the passage of red blood cells and white blood cells.” And as explained in Applicants’ previous submissions, neither *Smalley* nor *Kula* discloses such a filter layer. In fact, the Office Action concedes that *Kula* fails to disclose a filter.¹ Thus, even if *Alt I* could properly be combined with *Smalley* or *Kula* in the manner suggested by the Office Action, these combinations would still fail to meet the invention of claims 1 and 31.

Furthermore, independent claim 31 recites a medical implant with “a first strut having a tapered transverse cross-section relative to the longitudinal axis of the medical implant, the cross-section becoming smaller in area when moving from a reference point on the inside of the implant to the outside of the implant.” An example of a strut having a tapered transverse cross-section is demonstrated in the embodiment shown in FIG. 8, which is a transverse cross-section view of the stent in FIG. 7. FIG. 8 shows that the cross-section profile of stent strut 81 becomes tapered in an outward radial direction.

Kula describes a stent having variable wall thickness (see col. 7, lns. 12-14). However, these variations in wall thickness occur along a longitudinal cross-section of the stent, not a transverse cross-section. For example, the stent can be thicker at the ends than in the middle (see col. 7, lns. 43-45 and FIG. 9) or thinner at the bridges (see col. 7, lns. 46-47 and FIG. 11). In either case, the wall thickness in a transverse cross-section does not vary. Thus, the stent struts in *Kula* do not have a tapered transverse cross-section, as required by claim 31.

¹ Office Action dated 7/14/2008, at pg. 5, first paragraph.

The Office Action contends that “[i]t is inherent that a strut will have a smaller area for the areas toward the outside of the stent in locations where the stent has a smaller or tapered thickness.” Applicants respectfully disagree that this proposition is necessarily true. To illustrate this point, depicted below is a hypothetical example of a transverse cross-section of a stent strut:



As seen here, this stent strut has a tapered transverse cross-section. However, unlike the invention of claim 31, the cross-section becomes larger, rather than smaller, when moving from a reference point on the inside of the implant to the outside of the implant. Therefore, Applicants respectfully disagree that *Kula*'s disclosure of a stent having variable wall thickness necessarily means that the transverse cross-section of the stent strut becomes smaller in an outward radial direction.

For at least these reasons, Applicants respectfully submit that claims 21, 22, 28, 29, and 31-33 are non-obvious over the above-mentioned references cited in the rejection. Accordingly, withdrawal of the rejection is respectfully requested.

CONCLUSION

Applicants respectfully submit that the present application is in condition for allowance. The Examiner is invited to contact Applicants' representative to discuss any issue that would expedite allowance of this application.

The Commissioner is authorized to charge all required fees, fees under § 1.17, or all required extension of time fees, or to credit any overpayment to Deposit Account No. 11-0600 (Kenyon & Kenyon LLP).

Respectfully submitted,

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